IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7272 of 1995
TO
FIRST APPEAL NO.7276 of 1995

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SPL.LAQ OFFICER

Versus

PATEL NAROTAMBHAI HARIBHAI

Appearance:

MS HARSHA DEVANI for appellants

MR NITIN AMIN for respondents

CORAM : MR.JUSTICE Y.B.BHATT and
MR.JUSTICE C.K.BUCH

Date of decision: 22/04/98

COMMON ORAL JUDGEMENT (Per Y.B. Bhatt J.)

1. At the joint request of learned counsel for the respective parties, these appeals are taken up for final

hearing today.

2. These appeals have been filed on behalf of the State of Gujarat under section 54 of the Land Acquisition Act read with section 96, CPC, challenging the common judgement and awards passed by the Reference Court under section 18 of the said Act.

3. The lands under acquisition were acquired for the Dharoi Canal Scheme No.1. The notification under section 4 was published on 31st July 1986. It is, however, pertinent to note at this stage that possession was taken over by the authorities by private negotiations much prior to the publication of section 4 notification, on 27th October 1978. The Land Acquisition Officer in his award under section 11 had made an offer of Rs.3.50 ps per square meter. Being dissatisfied with the award, the land holders had preferred the References under section 18, which were heard and decided on merits by the Reference Court. The latter had determined the market value of the lands in question at Rs.40/- per square meter. It is this common judgement and awards which is the subject matter of the present group of appeals.

4. We have heard the learned counsel for the respective parties on the merits of the case, and have perused such evidence to which our attention has been drawn by the respective counsels.

5. As a result of the hearing and discussion, we had expressed our tentative view that the impugned judgement is unsatisfactory, and so also the determination of the market value on the basis of the only sale instance on record.

6. This doubtful sale instance is at Exh.76 whereby lands of Survey No.2805/2 was sold by document dated 8th January 1985, reflecting a sale price of Rs.39.33 ps per square meter. This document is proved by the purchaser Baldevbhai who has examined himself at Exh.78.

7. It, however, appears that looking to the deposition of Baldevbhai at Exh.78, and also the document at Exh.76, the Reference Court has made a calculation error in culling out the sale price. The document actually transfers an area of five and a quarter gunthas which is equivalent to 531 square meters. For this area the consideration paid was Rs.27562.50, whereby the sale price would work out to about Rs.50/- per square meter.

8. However, what is material and relevant is that

looking to the location of the land conveyed by the document, and comparing the same with the location and situation of the lands under acquisition, we find that the two are not comparable at all in terms of location and distance, and also looking to the development, the rate of development and the situation of the transferred land in the said context. Furthermore, it becomes apparent from the deposition of Baldevbhai (Exh.78), that he has purchased this small piece of land mainly because he was the owner of the adjacent and contiguous piece of land already. Thus, it is not only likely, but highly probable that he would have been willing to pay a higher price than would otherwise be justifiable. We are, therefore, of the opinion that Exh.76 cannot possibly constitute a reliable sale instance for the determination of the market value of the instant lands.

9. However, in all fairness, the learned counsel for the respondent-original land holders has agreed and conceded that even otherwise looking to other transactions of similar lands in the area, the lands under acquisition can fairly be valued between Rs.22 to 24 per square meter. We may still clarify that firstly this offer is based on other material which is not strictly speaking evidence on record. However, since this is in the nature of a concession made by the learned counsel for the respondent, we have looked into such material merely to satisfy ourselves that this concession is fair and reasonable. Accordingly we find that this is a fair and reasonable offer, and that looking to the peculiar facts of the case, the determination of market value within this range would meet the ends of justice, fairplay and good conscience.

10. We are conscious that if we were to decide the matter strictly on merits and strictly on the basis of evidence on record, we would have had to remand the matter back to the trial court while permitting the parties to lead further evidence. However, we are also conscious that the Supreme Court, in the case of K. Krishna Reddy, reported at AIR 1988 SC 2123, has cautioned the lower courts to avoid orders of remand, particularly in land acquisition matters. These observations made in paragraphs 11 and 12 of the said decision apply with full force to the facts of the present case. It is under these circumstances that we venture to apply our minds to the offer made by the learned counsel for the respondents, and accordingly hold that it is a fair and just offer.

11. Although learned counsel for the appellants had

sought to suggest that the market value of even Rs.20/per square meter would be justified, ultimately the learned counsel was not able to satisfy us to accept the figure suggested by the said counsel. Accordingly on the facts and circumstances of the case we hold and direct that the the market value of the lands under acquisition would be Rs.23/- per square meter.

12. There is another aspect which requires consideration in the context of the final orders passed by the Reference Court, arising from the application of section 23(1-A) of the said Act. The Reference Court has apparently applied the literal language used in the said provision and has directed as under:

> "They are also held entitled to 12% interest for the period from the date of the notification u/s.4 of the Land Acquisition Act, till the date of the award."

Although the Reference Court was conscious of the fact and which has specifically been observed in the impugned judgement in para 2 thereof, the possession was taken by the acquiring body by private negotiations on 27th October 1978, followed by the notification under section 4 on 31st July 1986, this unusual circumstance was lost sight of while passing the final order under section 23(1-A).

13. It is obvious that section 23(1-A) contemplates additional compensation at the rate of 12% per annum, where the compensation is computed at the rate of 12% per annum commencing from the date of the publication of the notification under section 4. However, in a few rare cases, as in the instant case, it may be found that the possession was in fact handed over prior to the publication of the notification. This, however, does not mean that the said provision is to be literally construed, and that on such facts, it should be found that the said provision would not apply at all.

14. This controversy has been set at rest by the decision of the Supreme Court in the case of Assistant Commissioner, Gadag Vs. Mathapati Basavannewwa, reported at AIR 1995 SC page 2492. Paragraph 4 of the said decision clarifies and explains the object of the Legislature in introducing section 23(1-A), and that is to mitigate the hardship caused to the owner of the land, who has been deprived of the enjoyment of the land by taking possession from him and using it for the public purpose, because of considerable delay in making the

award and offering payment thereof. In paragraph 5 of the said decision, the Supreme Court pointed out that a strict and literal construction leads to results which are unjust, causes further hardship to the owner and also defeats the legislative objects. The Supreme Court specifically considered the facts of that case, which are almost identical to the facts of the present case, inasmuch as possession was taken long before publication of the notification. On such facts the Supreme Court held that the additional compensation under section 23(1-A) would be computed at the rate of 12% per annum of the market value, from the date of taking possession (although the notification under section 4(1) was published later on).

15. We accordingly hold that the claimants-original land holders would be entitled to additional compensation under section 23(1-A) at the specified rate from the date of taking possession, and not from the date of publication of the notification under section 4(1), up to the date of the award.

16. We may also mention in passing that the learned counsel for the appellants has drawn our attention to an earlier decision of the Supreme Court in the case of Special Tahsildar (LA), PWD Schemes, Vijayawada Vs. M.A. Jabbar, reported at AIR 1995 SC 762, where on similar facts the Supreme Court found that the land owner would be entitled to additional amount under section 23(1-A) only for the period from the date of notification to the date of the award, and the principle of awarding additional amount from the date of taking over possession would amount to giving retrospective operation to section 23(1-A). We do not propose to discuss this decision in greater detail for the simple reason that this decision is impliedly over-ruled by the latter decision referred to and discussed hereinabove in the case of Assistant Commissioner, Gadag (supra).

17. No other contentions have been raised.

18. Accordingly these appeals are partly allowed with no order as to costs. Decree accordingly.

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